

THE CITY OF MURRIETA
CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into on June 6, 2017, by and between the City of Murrieta, a municipal corporation, hereafter referred to as "City," and Kimberley Summers, an individual, hereafter referred to as "Employee" or "City Manager." The City and the employee are referred to collectively as "Parties."

- A. The City requires the services of City Manager.
- B. The Employee has the necessary education, experience, skills and expertise to serve as the City's City Manager.
- C. The City Council of the City of Murrieta (hereafter "City Council") desires to employ the Employee to serve as the City Manager for the City.
- D. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

1. EMPLOYMENT

The City hereby agrees to employ Employee as City Manager of the City of Murrieta to perform the functions and duties specified in the Government Code and Murrieta Municipal Code, and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

2. TERMS OF EMPLOYMENT

A. Term

(1) Initial Term

The Initial Term of this Agreement shall be for a period of forty-eight (48) months commencing on July 1, 2017, and continuing until June 30, 2021 (the initial "Termination Date")

(2) Subsequent Terms

This Agreement shall automatically renew as provided herein unless the City gives the employee timely notice of non-renewal. The City must give Employee written notice of non-renewal at least twelve (12) calendar months prior to the initial Termination Date or any succeeding

Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional twelve (12) month Term, and a new Termination Date shall be accordingly established.

- (3) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the Employee at any time with 90 days' notice, for any lawful reason, subject only to the provisions as set forth in Section 5 of this Agreement.
- (4) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with the City, subject only to the provisions set forth in Section 5 of this Agreement.

3. DUTIES AND COMMITMENTS

A. The City Manager's Commitments

(1) Duties & Authority

- (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The City Manager shall perform all of the duties of the City Manager as set forth in Chapter 2.08 of the Murrieta Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.
- (c) The City Council may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities could include a redevelopment agency, financing authorities, and joint powers authorities.
- (d) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.
- (e) To accomplish this, the City Manager shall have the power and shall be required to:
 - (i) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council. The City Manager shall receive

notice of all regular and special meetings of the City Council.

- (ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council. The City Manager may publicly endorse or oppose any proposed agenda items placed on the agenda by persons other than the City Manager or the City Manager's staff.
- (iii) Direct the work of all appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council. The City Manager may undertake any study or investigation the City Manager believes is necessary or desirable and shall make any study or investigation the City Council directs. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.
- (iv) Recommend to the City Council from time to time adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.
- (v) Consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
- (vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
- (vii) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
- (viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

- (a) The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times.
- (b) It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. City Manager shall spend sufficient hours on site to perform City Manager's duties; however, City Manager, has discretion over the City Manager's work schedule.
- (c) The City Manager shall not spend any time teaching, consulting, speaking, or other non-City connected business for which compensation is paid without the express prior consent of the City Council.
- (d) City Manager will adhere to the International City Management Association ("ICMA") Code of Ethics.

(3) Disability or Inability to Perform

- (a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Section 5 below.

B. City Commitments

- (1) The City shall provide the City Manager with the compensation and benefits specified elsewhere in this Agreement.
- (2) The City shall provide the City Manager with a private office, secretary, staff, office equipment, supplies, automobile allowance, and all other facilities and services adequate for the performance of the City Manager's duties.

- (3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a City credit card to charge appropriate and lawful business expenses in accordance with applicable City policies.
- (4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement.
- (5) The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member, in accordance with the City's travel policy.
- (6) The City also agrees to pay for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager, in accordance with the City's travel policy.
- (7) The City recognizes the desirability of representation in and before local civic and other organizations, and the City Manager is authorized to become a member of civic clubs or organizations, for which the City shall pay membership dues.
- (8) Given the importance of technological tools to the effective and efficient business of City government, the City shall provide computer, laptop computer, high-speed internet access, cellular phone, and similar communication devices to the City Manager at the City's expense, both at the City Manager's office and, with the consent of the City Council, at the City Manager's residence. At the time of entering this contract, the City Manager shall receive a \$70 a month allowance for cell phone expenses.

C. City Council Commitments

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
- (2) The City Council recognizes that, to meet the challenges facing the City, they must exercise decisive policy leadership. As one step in carrying out

this leadership responsibility, the City Council commits to spending time each year outside of the regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals.

- (3) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.
- (4) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.
- (5) The City Council agrees that any criticism of the City staff members shall be done privately through the City Manager.
- (6) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

D. Mutual Commitments

- (1) Performance Evaluation
 - (a) Annual performance evaluations are an important way for the City Council and City Manager to ensure effective communications about expectations and performance.
 - (b) The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council Members evaluate the City Manager's performance.
 - (c) In accordance with the City Council City Manager Performance Review Policy, the City Council shall conduct an evaluation of the City Manager's performance at least once each year. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur semi-annually or more often during each calendar year. The Parties may use an outside facilitator paid by City funds to assist them in

conducting this evaluation, at the option of the City Council or the City Manager.

- (d) While performance evaluations for the purpose of mid-course corrections may occur several times during the year, the annual evaluation shall occur between May/June and November of each year.
- (e) In January of each year, the City Manager and the City Council will create goals or other outcome measures that will provide the basis for determining the next year's performance.
- (f) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Manager.
- (g) The City Council and the City Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the City Manager shall further establish a relative priority among those goals and performance objectives.

4. COMPENSATION

The City agrees to provide the following compensation to the Employee, as City Manager, during the term of the Agreement:

A. Base Salary

- (1) The annual salary for the position of City Manager shall initially be \$225,248.00, effective April 4, 2017 through June 30, 2017. Effective July 1, 2017, the City Manager will have annual salary of \$ 235,000.
The City Manager is entitled to receive a cost of living salary increase equal to that of other management employees. In addition, the City agrees to increase Employee's base salary and/or other benefits in such amounts and to such extent as the City Council may determine desirable on the basis of an annual performance review of the City Manager.
- (2) The City Manager shall be paid at the same intervals and in the same manner as regular City employees.

- (3) The annual base salary of the City Manager shall never be less than 110% of the base salary of the City's next-highest paid employee.
- (4) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then, in no greater percentage than any other management employee.

C. Basic Benefits

(1) Holidays

The City Manager is entitled to eleven (11) scheduled holidays and one (1) floating holiday per calendar year.

(2) Annual Leave

The City Manager shall receive the same annual leave accrual as provided to the at-will executive management employees of the City, not to exceed a maximum of 1,000. In the event of termination or resignation from employment, the City Manager will be entitled to compensation for 100% of accumulated and unused annual leave up to the maximum accrual limit.

(3) Administrative Leave

The City Manager shall receive the same administrative leave accrual as provided to the at-will executive management employees of the City. The City Manager shall be entitled to 120 hours of administrative leave as of the effective date of this Agreement. Thereafter, the City Manager shall receive 120 hours of administrative leave per complete year of employment. The City Manager may accumulate administrative leave not to exceed a maximum of 240 hours and may sell back 50% each June in accordance with the at-will executive management agreement. In the event of termination or resignation from employment, the City Manager will be entitled to compensation for 100% of accumulated administrative leave up to the maximum accrual limit in accordance with the at-will executive management agreement.

(4) Automobile Allowance

The City shall provide an automobile allowance of five hundred dollars (\$500.00) per month. Such allowance shall cease immediately upon termination or resignation of City Manager's employment.

(5) Health Care Benefits and Life Insurance

The City shall pay one hundred percent (100%) of the premium for group health and dental care for Employee and dependents until the City Manager becomes eligible for Medicare, and pay the cost pertaining to a term life insurance policy in an amount two times the amount of Employee's annual base salary, and contribute the maximum annual amount allowed by law in tax year 2017 for employees under the age of 50 years into a deferred compensation plan of the Employee's choice. The amount of deferred compensation will adjust to the maximum annual amount allowed by the IRS. In addition, Employee may voluntarily contribute to the City's deferred compensation program to the same extent allowed by the IRS, for employees. Employee shall vest for purposes of retiree benefits after two years (2) of continuous employment under the Agreement.

5. SEPARATION

A. Resignation

The City Manager may resign at any time and agrees to give the City at least sixty (60) days advance written notice of the effective date of resignation, unless the Parties otherwise agree in writing. If the City Manager voluntarily retires from service with the City, the City Manager will provide no less than six (6) months written notice to the City. The City Manager's actual retirement date shall be mutually established.

B. Termination and Removal

- (1) City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
- (2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing with ninety (90) days' notice. Termination, as used in this section, shall also include request that the City Manager resign, a reduction in salary or other financial benefits of the City Manager (unless voluntary, or as part of a general City management salary reduction, or by mutual agreement by City Manager and City Council), a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular meeting of the City Council.

- (3) The City Manager shall not be removed during the 60-day period preceding or ninety (90) days following any City election for membership on the City Council, or during the 90-day period following any change in membership of the City Council, except upon unanimous vote of the City Council.

C. Severance Pay

- (1) In the event the City Manager is terminated by the City Council during the time this Agreement is in effect, then in that event the City agrees to pay the City Manager a lump sum cash payment equal to nine (9) months base salary. The City also agrees to pay City Manager a lump sum cash payment equal to one (1) month's salary for each complete year of service under this Agreement, up to a maximum of an additional three (3) months. Total severance shall not exceed twelve (12) months base salary. Notwithstanding the foregoing, the maximum cash settlement that the City Manager may receive shall be an amount equal to the monthly base salary of the City Manager multiplied by the number of months left on the unexpired term of the Agreement, pursuant to Government Code section 53260. This does not include payment for any accrued leave owed to the City Manager.
- (2) The City shall pay City Manager a lump sum cash payment for the value of the accumulated leave pursuant to sections 4(C)(2) and 4(C)(3) of this Agreement.
- (3) In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and/or the California Continuation Benefits Replacement Act (Cal-COBRA). The City agrees to pay the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to a lump sum cash payment under section 5(C)(1) above.

D. Separation for Cause

- (1) Notwithstanding the provisions of 5(C) above, the City Manager may be terminated for cause. "Cause" shall include conviction of a felony (including a plea of nolo contendere thereto) or a finding by the City Council that the City Manager has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. If City Manager is removed for cause, the City shall not be obligated to pay the severance cash payment designated in section 5(C), or any payment other than those expressly required by law.

- (2) In the Event the City terminates the City Manager for cause, the City and the City Manager shall prepare a joint press release, which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party.

6. INDEMNIFICATION

City shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties in accordance with the provisions of California Government Code section 825. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

7. BONDING

The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

8. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The City Council, in consultation with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or any other law.
- B. All provisions of the Municipal Code, and regulations and rules of City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would executive management employees of City in addition to said benefits enumerated specifically for the benefit of Employee, except as herein provided.
- C. Such other benefits as the City Council may authorize in the future will be amended to this Agreement.

9. NOTICES

Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given and deemed served upon the other party if sent by United States Postal Service, postage prepaid, and addressed as follows:

TO CITY:

City Clerk
City of Murrieta
1 Town Square
Murrieta, California 92562

TO EMPLOYEE:

Kimberley Summers
Address on file with Human Resources
Office

Notices shall be deemed given as of the date of personal service or upon deposit in the course of transmission with the United States Postal Service.

10. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee with respect to salary benefits or other payments due Employee at the time of death.
- C. This Agreement shall become effective upon execution.
- D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and had not relied upon any representations of the City, its officers, agents, or employees, other than those expressly set forth herein.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused the Agreement to be signed and duly executed on its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, in triplicate, the day and first year above written.

CITY OF MURRIETA

By: _____

Rick Gibbs
Rick Gibbs
Mayor

CITY MANAGER

Kimberley Summers
Kimberley Summers

ATTEST:

By: _____

A. Kay Vinson
A. Kay Vinson, MMC, Interim City Clerk